

REMARKS

The December 23, 2010 Office Action regarding the above-identified application has been carefully considered; and the claim amendments above together with the remarks that follow are presented in a bona fide effort to respond thereto and address all issues raised in that Action. The independent claim has been further amended to emphasize patentability thereof over the art. Entry of various comments regarding the claims and/or the art, in the Office Action, should not be construed as any acquiescence or agreement by Applicants with the stated reasoning, regardless of whether or not these remarks specifically address any particular comment from the Office Action. For reasons discussed below, it is believed that this case is in condition for allowance. Prompt favorable reconsideration of this amended application is requested.

Claims 74, 75 and 77-87 are pending, for which claim 74 is the only independent claim. Claim 74 has been further amended.

Care has been taken to avoid entry of new matter. Claim 74 relates to a cellularly communicative electronic device, and the amendment above adds a recitation that the device includes electronic circuitry that allows the cellularly communicative electronic device to operate over a cellular network. In the original application, the description on page 9, lines 8-10, refers to "electronic circuits that allow the device to operate over a cellular network." The claim also has been amended to add "an interface manager executing in the system processor which configure the cellularly communicative electronic device" to implement subsequently recited user interface functions. Support for the interface manager appears, for example, in the paragraph beginning in line 3 of page 4 and original claim 17. It is respectfully submitted that

Application No.: 10/796,403

the added claim language finds adequate written descriptive support in the original application papers and does not raise any issues with regard to enablement or new matter.

The latest Action includes a rejection of remaining claims 74, 75 and 77-87 under 35 U.S.C. §103(a) as unpatentable over U.S. Publication No. 2004/0051741 to Venturino, in view of U.S. Publication No. 2005/0076312 to Gardner et al. (hereinafter Gardner), US Patent No. 4,291,198 to Anderson et al. (hereinafter Anderson) and US Patent No. 6,763,226 to McZeal, Jr. (hereinafter McZeal). Although not identified in the opening statement of the rejection on page 2 in the Detailed Action, the rejection does rely on the fourth document to McZeal to meet some aspects of independent claim 74 (see page 6). This rejection is respectfully traversed.

There are a number of errors in the rejection, relating to recitations of the claims allegedly met or taught by respective ones of the references, that show that the proposed combination of Venturino, Gardner, Anderson and McZeal would not really satisfy the independent claim.

As a first example, the rejection asserts that the Venturino device includes a keypad that has alpha or numeric keys as required by the independent claim. Applicants again submit that the analysis in the rejection is in error on the point. The sections of Venturino cited to support this position do not disclose **alpha or numeric keys**. Venturino provides a brief suggestion to adapt the menu to a cell phone (paragraph 0012 cited with regard to the keypad in the rejection), but the specific buttons disclosed by Venturino specifically relate to camera functions, only. For example, the Venturino camera includes digital buttons 84-102. Paragraph 0020 describes those buttons as including “menu button 84, navigate button 86, hotkey button 88, digital status button 90, OK button 92, cancel button 94, delete button 96, tag/record button 100 and 4-way switch 102 having top (12 o'clock) position 104, right side (3 o'clock) position 106, bottom (6 o'clock)

Application No.: 10/796,403

position 108, and left side (9 o'clock) position 110.” The discussion of buttons 84-102 does not characterize any of those buttons as **alpha or numeric**. The rejection cites to FIG. 2, but that drawing does not show **alpha or numeric** keys of a keypad.

The rejection also cites to the mention of “alphanumeric characters” in paragraph 0029. However, reliance on that paragraph ignores the context of that part of the Venturino disclosure. Paragraphs 0028 and 0029 state that:

The Digital Status LCD 82 is a programmable dot matrix display. The Digital Status LCD 82 portrays three classes of information, including: the current status and settings that pertain to various capture-critical digital functions (icons and alphanumeric characters).

Taken in context, it should be clear that paragraph 0029 actually describes an aspect of information **that Venturino provides on the display**, not the type of keys on the device. The description of displayed information in paragraph 0029 is not a disclosure of **alpha or numeric** keys of a keypad.

Hence, Applicants again submit that Venturino does not expressly disclose a cellularly communicative device keypad that has **alpha or numeric** keys as positively required by Applicants’ independent claim, and the analysis in the rejection is in error on the point.

The Examiner conceded in the rejection that Venturino does not disclose a dynamically assignable function key that is not one of the alpha or numeric keys of the keypad. The rejection instead relies on Gardner for an alleged disclosure of such a dynamically assignable function key. In the context of claim 74, the function key is “dynamically assignable” in that a key assignment area displays a function of the device dynamically assigned to the function key, and the cellularly communicative device performs the dynamically assigned function upon user activation of the function key during the display of the second screen (see last two paragraphs of claim 74). This function key is part of the keypad but is not one of the alpha or numeric keys of

Application No.: 10/796,403

the keypad. It is submitted that Gardner does not really teach the recited dynamically assignable function key as part of the device keypad arrangement.

The Gardner publication discloses a software utility navigation aid for hierarchical structures such as file managers, taxonomies, or tables of contents that displays a dynamic menu when the mouse cursor is hovered over an activator used to swap the expanded/collapsed state of a node displayed in a hierarchical structure (see Abstract). The menu contains entries that identify in which display level of expansion the node resides based on the structure's fully collapsed condition (from the root node), the number of display levels to which this branch of the hierarchy can be expanded, and the number of nodes that will be exposed when this branch is expanded to each of those levels. Each displayed entry in this menu, positioned both below and above the identified node, can be clicked to cause the hierarchical structure to expand or collapse to that display level. It is not seen, and the rejection has not identified, any teaching in Gardner that suggests that the selection is made by actuation of a dynamic function key of a keypad.

The rejection cites to dynamically generated menu 30 and the collapsible/expandable hierarchical structure 40 for an alleged teaching of a dynamically assignable function key. The actual teaching of Gardner, however, does not teach a dynamically assignable function key. A dynamically generated menu 30 is a display function, not a key to which a device can assign a function and provide a display of the function assignment. Similarly, collapsible/expandable hierarchical structure 40 is a display function, not a key to which a device can assign a function and provide a display of the function assignment. It is believed that the items in the menu 30 and the collapsible/expandable hierarchical structure 40 are selected via point and click. Hence, elements 30 and 40 of Gardner may suggest a dynamic menu display procedure with point and

Application No.: 10/796,403

click selection of displayed functions from the menu or other hierarchical structure, however, those elements do not suggest inclusion of a dynamically assignable function key or dynamic assignment of a function to key of the keypad where the function key is not one of the alpha or numeric keys.

The rejection also cites to paragraph 0017 of Gardner in support of the allegation that Gardner discloses a dynamically assignable function key. That paragraph reads in its entirety:

[0017] The multilevel expand/collapse navigation aid also provides an unobtrusive mechanism, in the form of a dynamically generated menu 30, that lets users easily expand or collapse a multilevel hierarchical structure 40 to a specific level of expansion. The menu 30 can be implemented as a Javascript layer to display expand/collapse options specific to the selected node 20'. However, as will be appreciated by those of ordinary skill in the art, the menu 30 can be created using technologies other than a Javascript layer, and the invention is not intended to be limited to a menu created using a Javascript layer.

There is nothing in the cited paragraph about a dynamically assignable function key.

For at least these reasons, contrary to the rejection, the Gardner disclosure of a dynamically generated **menu display** for point and click activation does not teach inclusion of a dynamically assignable function **key** in a **device keypad**, where the dynamically assignable function key is not one of the alpha or numeric keys of the keypad, as claimed. Applicants respectfully submit that Gardner would not lead one of skill in the art to add of a dynamically assignable function key, of the type specifically recited in claim 74, to the device of Venturino.

Hence, the rejection is based on an erroneous analysis that Venturino in combination with Gardner meets claim requirements for a cellularly communicative electronic device keypad including a plurality of alpha or numeric keys and a dynamically assignable function key, wherein the dynamically assignable function key is not one of the alpha or numeric keys of the keypad. Anderson is not cited for these features of Applicants' independent claims. Instead, the rejection next takes the position that the combination Venturino and Gardener does not include

(a) a first level menu providing a plurality of functional groupings for user selection, on a first area of the displayed first screen, and (b) a key assignment area displaying a function of the cellularly communicative device associated with the selected choice, dynamically assigned to the function key of the cellularly communicative device, but cites instead to Anderson for those features. However, the analysis treats the claim limitations out of context, therefore, it is believed that Anderson would not actually suggest modification of Venturino and Gardener to meet the specific claim requirements.

In the claim, the first level menu recitation relates to a display produced by the first process thread and the first screen displayed from that process thread. However, as claimed, the key assignment area is part of the second screen displayed from the third process thread. Anderson does suggest a menu structure in which menu selections are dynamically assigned to function keys along the side of the display screen (e.g. FIG. 8 and description from line 31 of column 13 to line 60 of column 14). It is respectfully submitted that the menu structure and function assignment of Anderson does not meet the actual claim requirement that the displayed first screen includes both: (a) a first level menu providing a plurality of functional groupings for user selection, on a first area of the displayed first screen, and (b) a second area of the displayed first screen containing a second level menu of choices for user selection from within a selected one of the functional groupings of the first level menu. Examples of the recited first screen appear in Applicants' FIGS. 4a-4e where the first level menu is shown at 220, and examples of various second level menus 260, 265, 270, 275 and 280 are shown in the second area (see also specification page 13, lines 18-23). It is not seen how the menu of FIG. 8 of Anderson would suggest the recited first screen that includes both the first level menu of functional groupings on a first area and a second area containing a second level menu of choices for user selection from

Application No.: 10/796,403

within a selected one of the functional groupings of the first level menu. If Venturino and Gardener do not meet these first screen requirements, it is believed that the addition of Anderson does not overcome the claim distinction on the point.

With regard to the key assignment area, the independent claim actually recites that the second screen concurrently includes both an area containing information relating to the selected choice and a key assignment area. It is respectfully submitted that the teaching of a menu structure with each menu item associated with a function key as in Anderson does not fairly suggest a second displayed screen as claimed that concurrently includes both an area containing information relating to the selected choice and a key assignment area.

For these various reasons, the basic combination of Venturino, Gardner and Anderson is based on erroneous analysis of the claims and the documents and/or would still not meet various claim requirements attributed to that combination.

In addition to the above-noted failures of the combination of Venturino, Gardner and Anderson, the Examiner concedes in the rejection that the combination of Venturino, Gardner and Anderson still does not satisfy claim requirements to the effect that “each of the functional groupings represents a different group of cellular device functions offered by the cellularly communicative electronic device, and the cellular device functional groupings include call messaging, contacts list, obtaining device services, recent calls, and settings and tools.” Instead, the rejection points to McZeal to support an allegation that yet further modification of Venturino, Gardner and Anderson to meet these claim requirements would have been obvious. Applicants respectfully disagree and submit that the actual teachings of McZeal would not suggest the specifically recited functional groupings display.

McZeal discloses a multifunctional mobile cellular and satellite communication device. McZeal does disclose a variety of functions of the cellular device. However, it is not seen, particularly in the drawings and figures identified in the rejection, where McZeal discloses a first level menu or the like that displays functional groupings, where each of the displayed functional groupings displayed on the menu “represents a different group of cellular device functions offered by the cellularly communicative electronic device,” as in claim 74. Also, it is submitted that McZeal does not disclose display of cellular device functional groupings that specifically include the groupings “call messaging, contacts list, obtaining device services, recent calls, and settings and tools,” as claimed.

For example, other distinctions/errors notwithstanding, even with the addition of McZeal, there is no express disclosure or teaching anywhere in the four applied documents of a first screen concurrently comprising a first level menu providing a plurality of selectable functional groupings and a second area displaying a second level menu of choices under a selected grouping, wherein in the first area:

each of the functional groupings represents a different group of cellular device functions offered by the cellularly communicative electronic device, and

the cellular device functional groupings displayed in the first level menu include call messaging, contacts list, obtaining device services, recent calls, and settings and tools;

It is respectfully submitted that the combination of Venturino, Gardner Anderson and McZeal would not fully satisfy all of the clear, concise specific requirements of independent claim 74. For at least that reason claim 74 and its dependent claims should be patentable over that combination.

Applicants further submit that the combination of Venturino, Gardner Anderson and McZeal would not have been obvious in the legal sense.

Application No.: 10/796,403

The claims relate to a cellularly communicative electronic device. Cellular device aspects, however, are not recited just in the preamble as a non-limiting intended use but appear in the body of the claim. Claim 74, for example, recites electronic circuitry that allows the cellularly communicative electronic device to operate over a cellular network and an interface manager executing in the system processor which configures the cellularly communicative electronic device to implement the later recited functional user interface aspects of the cellularly communicative electronic device. The rejection is based on four references, only one of which (McZeal) really clearly relates to a cellular device. Venturino only barely mentions a cell phone.

To support a conclusion of obviousness under 35 U.S.C. §103(a), there must be some rationale or reasonable basis for modifying the prior art, underpinning the proposed combination of references. *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396, 127 S. Ct. 1727, 1741 (2007) (explaining that obviousness determinations must have some rational underpinning). The starting point of the rejection in this case is (1) Venturino, a camera patent that only vaguely mentions other devices such as cell phones and personal digital assistants. The Examiner recognizes that Venturino does not teach many different aspects of Applicants' claims. Instead, the rejection cites (2) Gardner, (3) Anderson, and (4) McZeal, just to allegedly meet the independent claim. Gardner does not mention a cell phone or the like but relates instead to a computer; and Anderson discloses an intelligent general purpose landline telephone device not a cellularly communicative electronic device. Only McZeal actually discloses a multifunctional mobile cellular communication device. Even if the four documents actually provided all of the piece-parts needed to meet claim 74 (which they do not for reasons discussed above), Applicants respectfully submit that there is no reason or appropriate rationale to arbitrarily pick and choose elements or functions from so many dissimilar sources in the particular manner selected in the

Application No.: 10/796,403

rejection, other than a vain effort to re-create Applicants' claims using improper hindsight. Although some reason for one or more of the individual piecemeal modification(s) may be apparent at this late date, it is submitted that there would not have been one overarching reason for so extensive a modification of Venturino, apparent to a person of skill in cellular communication devices prior to Applicants' invention of the claimed subject matter.

Hence, the combination proposed in the latest rejection would not have been obvious in the sense of 35 U.S.C. §103. For this additional reason, it is respectfully submitted that the pending claims patentably distinguish over the art applied in the rejection in the latest Office Action.

Upon entry of the above claim amendments, claims 74, 75 and 77-87 remain active in this application, all of which should be patentable over the art applied in the Action. Applicants therefore submit that all of the claims are in condition for allowance. Accordingly, this case should now be ready to pass to issue; and Applicants respectfully request a prompt favorable reconsideration of this matter.

It is believed that this response addresses all issues raised in the December 23, 2010 Office Action. However, if any further issue should arise that may be addressed in an interview or by an Examiner's amendment, it is requested that the Examiner telephone Applicants' representative at the number shown below.

Application No.: 10/796,403

To the extent necessary, if any, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in dark ink, appearing to read "Keith E. George", is written over the printed name.

Keith E. George
Registration No. 34,111

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 KEG:apr
Facsimile: 202.756.8087
Date: March 9, 2011

**Please recognize our Customer No. 20277
as our correspondence address.**